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RemarksAcknowledgement of Claim 43

Applicants note that the Office Action Summary cover sheet, under "Disposition of Claims," indicates that only claims 1-42 are pending in the application. Further, the Elections/Restrictions section on pages 2-4 of the Office Action only addresses claims 1-42. However, Applicants respectfully submit that independent claim 43 was also originally filed with the application. See page 36 of the originally filed application. See also claim 43 of the published application (U.S. Pat. App. Pub. No. 2005/0165853). Therefore, Applicants respectfully request examination of claim 43.

Traversal of the Restriction Requirement

On page 2 of the Office Action, the Examiner restricted the claims to one of the following two groups:

Group I: Claims 1-10, 21-30 and 42; and

Group II: Claims 11-20 and 31-41.

Applicants respectfully traverse this restriction requirement. According to pages 2 and 3 of the Office Action, the claims in groups I and II are subcombinations usable together under MPEP § 806.05(d). While Applicants make no representations as to whether the claims in the two groups are patentably distinct, Applicants respectfully submit that a restriction based on subcombinations that are usable together is not appropriate for the instant groupings. See MPEP § 806.05(d) (indicating that, rather than necessitating a restriction, claimed subcombinations, disclosed as usable together

in a single combination, and which can be shown to be separately usable, are *usually* restrictable). In addition, the Examiner must provide reasons why there would be a serious burden on the Examiner if restriction is not required. See MPEP § 808.

According to page 3 of the Office Action, the restriction should be required because "the search required for group I is not required for the other group." However, Applicants respectfully disagree. Claim 41 states:

41. A method for localized imaging and restoration of a file system in a partition comprising a plurality of allocation units, the method comprising:

- copying each allocation unit occupied by a file of the file system to a locally-stored image file, wherein the locally-stored image file is within the same partition as the file system; and
- adding a directory map to the locally-stored image file that associates copied allocation units in the locally-stored image file with names of corresponding files from the file system.
- locating the locally-stored image file within the partition;
- initializing at least a subset of the allocation units of the partition not occupied by the locally-stored image file including one or more allocation units used for a directory area of the partition;
- extracting file data from the locally-stored image file into the initialized allocation units without disturbing the locally-stored image file; and
- creating a new directory area for the partition using the directory map.

Applicants respectfully submit that a search covering claim 41 (categorized in group II by the Examiner) would substantially cover independent claims 1, 21 and 42 of group I, as well as independent claims 11 and 31 (and claim 43) of group II. Thus, the search for both groups would not be a serious burden on the Examiner.

Also according to page 3 of the Office Action, the restriction should be required because the inventions "have acquired a separate status in the art because of their recognized divergent subject matter." However, Applicants respectfully submit that the Examiner has failed to show how they have acquired separate status. Applicants note that MPEP § 808.02(B) states that "[s]eparate status in the art may be shown by citing patents which are evidence of such separate status." However, the Examiner has only provided a mere conclusion of separate status. See MPEP § 808 (stating that reasons are "distinguished from mere statements of conclusion"). Thus, the Examiner has not shown how the restriction is necessary to avoid a serious burden on the Examiner.

Also according to page 3 of the Office Action, the restriction should be required because the inventions have acquired a separate status in the art as shown by their different classification. Page 2 of the Office Action indicates that group I is classified in class 707, subclass 102 and that group II is classified in class 707, subclass 204. Applicants note that both groups are in the same class and that class 707 is defined as "Data processing: database and file management or data structures." Further, subclass 102 is defined as "Generating database or datastructure (e.g., via user interface)," and subclass 204 is defined as "Archiving or backup."

Like the claims in group II, Applicants respectfully submit that the claims in group I are more directed to the subject matter of subclass 204 than to subclass 102. Both groups are directed to archiving or backup. For example, claim 1 (from group I) includes "**copying** each allocation unit occupied by a file of the file system." (Emphasis

added). Thus, claim 1 is directed to backing up an already existing file in an already existing file system. Therefore, there is no clear indication of a separate classification or field of search.

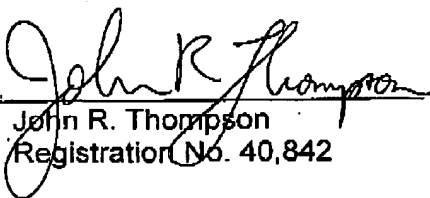
For at least the foregoing reasons, Applicants respectfully request that the restriction requirement be withdrawn and claims 1-43 examined on the merits. In addition, should there be any questions or issues that could be resolved via a telephone conversation, the Applicant invites the Examiner to contact the undersigned at the number shown below.

Provisional Election

Based on the subject matter of claim 43 and the other claims in group II, Applicants respectfully submit that claim 43 should be included in group II. Notwithstanding the foregoing, Applicants elect, with traverse, the claims of group II including claims 11-20, 31-41, and 43.

Respectfully submitted,

Altiris, Inc.

By 
John R. Thompson
Registration No. 40,842

STOEL RIVES LLP
One Utah Center Suite 1100
201 S Main Street
Salt Lake City, UT 84111-4904
Telephone: (801) 328-3131
Facsimile: (801) 578-6999